

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

HERMAN CRUZ,

Plaintiff,

v.

**9:13-CV-30
(FJS/TWD)**

M. GROSSO,

Defendant.

APPEARANCES

OF COUNSEL

HERMAN CRUZ

86-C-0468

Sullivan Correctional Facility

Box 116

Fallsburg, New York 12733

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

615 Erie Boulevard West, Suite 102

Syracuse, New York 13204-2465

Attorneys for Defendant

KEVIN M. HAYDEN, AAG

SCULLIN, Senior Judge

ORDER

Plaintiff filed this *pro se* prisoner civil rights action pursuant to 42 U.S.C. § 1983.

Defendant moved to dismiss the complaint pursuant to Rule 37(d) of the Federal Rules of Civil Procedure as a sanction for Plaintiff's failure to submit to a deposition or, alternatively, to dismiss the complaint as a sanction pursuant to Rule 11 of the Federal Rules of Civil Procedure for making a sworn material misrepresentation to the Court. *See* Dkt. No. 113. Plaintiff did not file an official response to the motion, but he did send the Court several letters and motions. *See* Dkt. Nos. 116,

117, 119, 120).

In a Report-Recommendation and Order dated July 6, 2015, Magistrate Judge Dancks recommended that the Court grant Defendant's motion to dismiss Plaintiff's complaint without prejudice as a sanction for his failure to submit to a deposition. *See* Dkt. No. 122 at 11-12.

On July 15, 2015, the Court received Plaintiff's response to the July 6, 2015 recommendations. *See* Dkt. No. 123. Plaintiff's response consisted of a copy of Magistrate Judge Dancks' Report-Recommendation and Order with Plaintiff's hand-written note at the bottom of the first page. *See id.* at 1. Given the ambiguity of Plaintiff's response, the Court directed the Clerk of the Court to send Plaintiff another copy of Magistrate Judge Dancks' Report-Recommendation and Order and reminded Plaintiff that his objections, if any, were due on or before July 23, 2015. *See* Dkt. No. 124, Text Order. Plaintiff has not filed any additional response to Magistrate Judge Dancks' Report-Recommendation and Order.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Dancks' July 6, 2015 Report-Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Dancks' July 6, 2015 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

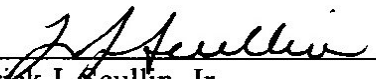
ORDERS that Defendant's motion to dismiss Plaintiff's complaint without prejudice pursuant to Rule 37(d) of the Federal Rules of Civil Procedure as a sanction for Plaintiff's failure to submit to a deposition, *see* Dkt. No. 113, is **GRANTED**; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Defendant and close this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: July 27, 2015
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge